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**MAY 17 2006**

**OFFICE OF PETITIONS**

In re Application of Veilleux et al. :  
Application No. 09/836,310 : Decision on Petition  
Filing Date: April 17, 2001 :  
Attorney Docket No. 186.011US1 :

This is a decision on the petition under 37 CFR 1.181, filed March 13, 2006, to withdraw the holding of abandonment.

The petition is **granted**.

Facts:

A Notice of Non-Compliant Amendment was mailed on June 24, 2005.

Petitioner states a discussion was held with the examiner on Monday, July 25, 2005. Petitioner states the examiner admitted the Notice of Non-Complaint Amendment was mailed in error.

Petitioner has supplied a letter from the examiner which states, "the Non-Compliant Notice ... mailed on 6/24/2005 was a mistake." The letter from the Examiner was not scanned into the electronic image file wrapper. The file wrapper also does not include an interview summary.

Petitioner has supplied a copy of a "Response to Notice of Non-Compliant Amendment" filed by facsimile transmission on July 25, 2005. The image file wrapper does not contain a copy of the Response because the facsimile transmission was sent to an incorrect facsimile transmission number<sup>1</sup> or for other reasons.

The Response filed on July 25, 2005, stated the examiner had stated the Notice was mailed in error over the telephone and had sent a letter stating, "the Non-Compliant Notice ... mailed on 6/24/2005 was a mistake."

The image file wrapper was reviewed on or before January 13, 2006. The reviewer failed to recognize the examiner had sent a letter effectively vacating the Notice of Non-Compliant amendment. As a result, a Notice of Abandonment was mailed on January 13, 2006.

<sup>1</sup> See *Centralized Delivery and Facsimile Transmission Requirements for Patent Application Related Correspondence*, 1275 Off. Gaz. Pat. Office 200 (Oct. 28, 2003) and *New Patents Central FAX Number and Updated Lists of Exceptions to the Centralized Delivery and Facsimile Transmission Policy for Patent Related Correspondence* 296 Off. Gaz. Pat. Office 76 (July 12, 2005).

Discussion:

Petitioner was responsible for filing a proper reply to the Notice of Non-Compliant Amendment unless the examiner vacated the Notice.

On or before July 25, 2005, the examiner sent a letter stating, "the Non-Compliant Notice ... mailed on 6/24/2005 was a mistake." The letter will be treated as a paper vacating the Notice of Non-Complaint Amendment. Therefore, the application is not abandoned.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Technology Center Art Unit 3635 will be informed of the instant decision and the examiner will mail a new Office action in response to the amendment filed on April 4, 2005, in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

A handwritten signature in black ink, appearing to read 'C. Brantley', with a stylized flourish at the end.

Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions